

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-02899

BETWEEN

ROGER CHACON

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO FIRST DEFENDANT

POLICE CORPORAL HOSTEN # 13307

SECOND DEFENDANT

Before the Honourable Mr Justice R. Boodoosingh

Mr J. Honore and Mr D. Waithe for the Claimant

Mr R. Singh and Ms R. Granado for the Defendant

Dated: 18 June 2012

REASONS

1. By Claim Form and Statement of Case filed 11 August 2009, the claimant sought damages for false arrest and imprisonment from Monday 16 March 2009 to Wednesday 18 March 2009. During this time he was detained by the police in connection with a report of larceny.

2. The claimant gave evidence. The defendants called Carl Hosten, a police corporal, and Mr Shadrack Singh.

3. The claimant was an employee of the Flow Cable Company (Flow). The second defendant arrested him and kept him detained for two days.

4. The main issue is whether the second defendant had reasonable and probable cause to arrest the claimant for this period.

5. Corporal Hosten gave evidence that Mr Singh, also an employee of Flow, reported that equipment from the company was missing. An audit had been conducted which showed items missing from their warehouse. Corporal Hosten's investigation led him to one Riaz Mohammed. During an interview with Mr Mohammed, information was given to Hosten about persons working at Flow alleged to be involved in the larceny, and from whom he, Mohammed, was getting equipment. Descriptions were given. It should be noted that various items were seized from Mohammed and Mohammed was charged. Corporal Hosten was unfamiliar with the

persons at Flow. He conveyed the descriptions to Mr Singh. The descriptions included one of a man known as Roger “Chinee”. Based on this, Mr Singh and his colleagues from Flow were able to identify the claimant as one of the persons referred to because he was the only person who was working for them with access to the company’s warehouse who fit the description of being of Chinese descent. The other persons named were also familiar to the Flow personnel as persons who had worked for Flow, but who had moved on to work for contractors used by Flow.

6. It was based on this that the claimant was held. He was taken to his home, which was searched.

7. Corporal Hosten gave evidence that as the investigation progressed, they had to check items that were being found with the Flow personnel and to liaise back and forth.

8. It was accepted by both sides that the police have the power to arrest someone suspected of having committed an arrestable offence. Larceny is one such offence.

9. The test of reasonable and probable cause has both subjective and objective elements.

10. The subjective question is, did the police officer actually have the relevant suspicion or belief. The objective element is, were there, in fact, reasonable grounds for that suspicion or belief.

11. Here there was a report of larceny. A person was interviewed and charged. He was found with stolen items. He gave a description of others involved. That description was tested with officials from the company. The claimant was identified based on the description. The claimant was the only suspect who was employed by the company. He had access to the warehouse where the missing equipment was kept.

12. Based on this, I find, on a balance of probabilities, that the second defendant had sufficient facts which the ordinary and prudent man with knowledge of the law would see as reasonable and probable cause to suspect that the claimant had committed an offence.

13. The claimant was detained while investigations took place.

14. This case is similar to that of **Dallison v Caffery [1964] 2 All ER 610**. At pages 616 and 617 Lord Denning MR. said:

“So far as arrest is concerned, a constable has long had more power than a private person. If a constable makes an arrest without a warrant, he can justify it on the ground that he had reasonable cause for suspecting that the accused had committed a felony. He does not have to go further (as a private person has to do) and prove that a felony

has in fact been committed. So far as custody is concerned, a constable also has extra powers....

When a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says that he was working, for there he may find persons to confirm or refute his alibi. The constable can put the suspect up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice; by which I mean, of course, justice not only to the man himself but also to the community at large. The measures must, however, be reasonable.”

15. I also found that the officer did believe he had reasonable and probable cause to think the claimant was in some way involved in the larceny that warranted his arrest for further investigations.

16. The claimant was not kept for an unreasonable time in custody and he was promptly released on completion of the investigations.

17. Notwithstanding the cross examination of the second defendant in terms of his lack of record keeping, I found him to be a credible witness whose evidence I believed. I found his account in his witness statement to be a clear and justified account of the investigations relating to the claimant. I was also impressed by Mr Singh’s evidence. He came across as being someone who acted professionally, and who was trying to get to the bottom of the thefts taking place at the company. It is noteworthy that the claimant remained in employment with the defendant up to the trial.

18. I also note that the claimant's evidence was the briefest possible. It comprised of only 2 paragraphs. It essentially said he was arrested and kept. He was taken for a search. There was no assertion that he knew nothing of the events. There was no evidence of any facts or incidents from which any motive, other than conducting an investigation, could be gleaned. The police officer was entitled to rely on the information of another suspect, against whom he had a case, based on the finding of evidence and the information he provided. Sometimes, this is the nature of the evidence available during the course of an investigation. The officer also sought to verify the information. Information had come in and he had to act on it in the diligent discharge of his duties. He would have been failing in his duty had he not so proceeded. In my view, he acted with commendable fairness towards the claimant.

19. This is one of those unfortunate situations where the investigation, though fully justified, did not lead to a charge being brought. This sometime happens. It does not, however, lead to a conclusion of a wrongful arrest and detention.

20. For these reasons, the claimant's case was dismissed. He was ordered to pay the defendant's costs in the sum of \$14,000.

Ronnie Boodoosingh

Judge